

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SABBY VOLATILITY WARRANT MASTER FUND,
LTD and SABBY HEALTHCARE MASTER FUND,
LTD.,

Plaintiffs,

v.

U.S. BANK NATIONAL ASSOCIATION,

Defendant.

Case No.: 18-cv-05224 (GBD)

**DECLARATION OF JAMES S. CARR, ESQ IN SUPPORT OF
DEFENDANT U.S. BANK NATIONAL ASSOCIATION'S MOTION TO DISMISS**

I, James S. Carr, Esq. declare as follows:

1. I am a partner of Kelley Drye & Warren LLP, attorneys of record for defendant U.S. Bank National Association ("U.S. Bank" or "Defendant").
2. I submit this declaration in support of Defendant's Motion to Dismiss.
3. Attached as **Exhibit A** hereto is a true and correct copy of the Interim Order Approving Debtor-In-Possession ("DIP") Financing that was publicly filed on March 13, 2018 in the bankruptcy proceeding of Orexigen Therapeutics, Inc. currently pending in the United States Bankruptcy Court for the District of Delaware: *In re Orexigen Therapeutics, Inc.*, Case No. 18-10518 (KG) (Bankr. D. Del.) (the "Orexigen Bankruptcy").
4. Attached as **Exhibit B** hereto is a true and correct copy of the Final DIP Order that was entered by the Delaware Bankruptcy Court and publicly filed in the Orexigen Bankruptcy proceeding on April 13, 2018.

5. Attached as **Exhibit C** hereto is a true and correct copy of the Motion for Entry of Interim and Final Orders Approving DIP Financing that was publicly filed in the Orexigen Bankruptcy proceeding on March 12, 2018.

6. Attached as **Exhibit D** hereto is a true and correct copy of the relevant excerpts of the Affidavit of Service that was publicly filed by Kurtzman Carson Consultants (“KCC”), the claims and noticing agent for the debtor, in the Orexigen Bankruptcy proceeding on March 15, 2018.

7. Attached as **Exhibit E** hereto is a true and correct copy of the DIP Loan Agreement that was publicly filed in the Orexigen Bankruptcy proceeding on March 12, 2018, and approved pursuant to the Final DIP Order on April 13, 2018.

8. Attached as **Exhibit F** hereto is a true and correct copy of the March 12, 2018, direction and authorization letter received by U.S. Bank from the Initial DIP Lenders that is referenced in the First Amended Complaint.

9. Attached as **Exhibit G** hereto is a true and correct copy of the official Note Register of each of the holders that was kept at the designated office of U.S. Bank as Indenture Trustee pursuant to the terms of the Indenture that is incorporated and referenced in the First Amended Complaint.

10. Attached as **Exhibit H** hereto is a true and correct copy of the relevant excerpts of the Affidavit of Service of the Final DIP Order that was publicly filed by KCC in the Orexigen Bankruptcy proceeding on April 18, 2018.

11. Attached as **Exhibit I** hereto is a true and correct copy of the Challenge Under Final DIP Order that was publicly filed by plaintiffs Sabby Volatility Warrant Master Fund, Ltd. and Sabby Healthcare Master Fund, Ltd. in the Orexigen Bankruptcy proceeding on June 11, 2018.

12. Attached as **Exhibit J** hereto is a true and correct copy of the Order Approving the Stipulation Resolving Putative Challenge of the Sabby Noteholders to the Final DIP Order and Related Matters that was entered by the Delaware Bankruptcy Court and publicly filed in the Orexigen Bankruptcy proceeding on July 11, 2018.

13. I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
August 13, 2018

KELLEY DRYE & WARREN LLP

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